**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 24530 of 2006**

**For Approval and Signature:**

**HONOURABLE MR. JUSTICE B.J.SHETHNA**
**HONOURABLE MR.JUSTICE H.B.ANTANI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**PADMAKAR GABA PATIL - Petitioner(s)**
**Versus**
**UNION OF INDIA THRO'SECRETARY & 4 - Respondent(s)**

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**Appearance :**
MR GIRISH K PATEL for Petitioner(s) : 1,
MRS VASAVDATTA BHATT for Respondent(s) : 1,
None for Respondent(s) : 2 - 5.

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**CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA**

**and**

**HONOURABLE MR.JUSTICE H.B.ANTANI**

**Date : 29/01/2007**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)**

Rule. Learned Counsel Ms. Vasavdatta Bhatt waives service of Rule on behalf of the respondents. Detailed Reply Affidavit is filed in this matter on behalf of the respondents. Thus, the record is complete. Therefore, by consent of the learned Counsel for the parties the matter is finally heard today and disposed of by this Order.

Petitioner – Padmakar Gaba Patil was appointed as Constable in CISF on 11.11.1990. He was posted from CISF Unit BSP Steel Plant, Bhilai to CISF Unit, KPT Kandla on 23.6.2004. Initially he was deployed for Company Writer duty from 23.6.2004 to 18.9.2004 and thereafter on 19.9.2004 he was deployed in Crime and Intelligence Wing (CIW) of CISF Unit to gather the information and to keep surveillance on the anti-social activity of thousands of employees working in KPT, civilians, visitors and CIF personnel in the vast port area which is spread over in more than 6 kilo meters wherein more than 10000 containers were kept. Daily thousands of trucks, vehicles and persons were passing through three different gates of the port. Though the whole area is divided in four parts but, only two CIW constables are deployed on duty and one person in night time in shift-wise for 12 hours for the aforesaid duties.

It had so happened that one Goodrich Maritime (P) Ltd., a Shipping Agency by its letter dated 4.12.2004 informed the Port Authorities about theft

of 13 tons of Copper scraps from container CRUX – 2220580 kept in port area by unknown persons between 17th November to 4th December, 2004 (Annexure : B). F.I.R. came to be lodged at Kandla Police Station on 23.12.2004 for the said incident against unknown persons (Annexure : C). During the investigation the Police recovered Muddamal and filed charge-sheet against 29 accused persons on 29.6.2005 for the offences u/ss. 461, 380, 409 and 120-B I.P.Code. Investigation also reveals that the theft had taken place with the connivance of three CISF Constables – Chandramani Mishra, who was deployed on Gate duty and two other Constables (i) Rajesh Yadav, and (ii) Akshaykumar Hareramsing. They had taken money from the accused for permitting them to take out the goods from the gate. Charge-sheet filed by the Police is at Annexure : D. It is pertinent to note that in the said charge-sheet there is no reference to the involvement of the present petitioner any where, directly or indirectly.

However, the charge was framed against the petitioner on 24.3.2005 (Annexure : E) by the respondent No.5 – Commandant, CIF Unit KPT, Kandla stating that the petitioner failed to keep watch on the criminal activities when he was deployed on CIW duty on north gate and surrounding area from 17.11.2004 to 25.11.2004 and that he failed to collect the information about the incident of theft of 13 tons of copper scraps from the container which shows his gross negligence in duty which amounts to

his gross indiscipline as well.

He submitted his reply on 4.4.2005 to the aforesaid charge. Thereafter, Shri M.S.Sahi, Inspector/ Executive of CISF Unit, Bhuj Airport was appointed as Inquiry Officer to inquire into the said charge. Regular inquiry was held wherein the department had led the documentary evidence in form of four documents and examined one witness. Thereafter, defence statement of the petitioner was recorded wherein he had produced his Leave Certificate for the period from 26.11.2004 to 16.12.2004. After considering the documentary as well as oral evidence led before him the Inquiry Officer by his Report dated 25.8.2005 (Annexure : G) came to the conclusion that the department failed to prove the charges levelled against the petitioner – delinquent and, therefore, he exonerated him from the charges levelled against him. However, the Disciplinary Authority i.e. Respondent No.5 – Commandant did not agree with the findings recorded by the Inquiry Officer and with his dis-agreement Note dated 22.9.2005 (Annexure : H collectively) he came to the conclusion that the charge levelled against the delinquent was found to be proved, therefore, delinquent may show cause as to why he should not be punished to which he replied on 6.10.2005. However, the Disciplinary Authority by his impugned order dated 3.12.2005 (Annexure : I) did not accept the explanation offered by the petitioner – delinquent and imposed minor penalty of reduction of

pay of one stage i.e. Rs.3880 to Rs.3795 for a period of one year with future effect by his order dated 3.12.2005 (Annexure : I).

It is pertinent to note that the petitioner had not challenged the aforesaid order of penalty imposed by the respondent No.5 by way of Appeal before the Appellate Authority. However, the Appellate Authority i.e. D.I.G. took up the matter in his suo-motu jurisdiction under Rule : 54 of CIFS Rule 2001 as he was of the opinion that the punishment awarded by the Disciplinary Authority i.e. Respondent No.5 was grossly disproportionate with the gravity of charge levelled and found to be proved against the delinquent. Therefore, show cause notice dated 27.2.2006 (Annexure: J collectively) was issued to the petitioner by the DIG – Respondent No.4 calling upon the petitioner to show cause as to why he should not be dismissed from service. Petitioner submitted his Reply dated 23.3.2006 (Annexure : J collectively) and also tried to defend him by submitting that he was not guilty for misconduct for which he was charge-sheeted. He has stated in his reply that negligence, if any, was on the part of the administration and not on his part, but to shield the lapse of the administration he was made victim by the Disciplinary Authority of not agreeing with the findings recorded by the Inquiry Officer in his favour. This seems to have annoyed the Appellate Authority and, therefore, by his impugned order dated 19.4.2006 (Annexure : K) the D.I.G. ordered to

dismiss the petitioner from service for the charges of negligence or indiscipline. This time the petitioner had challenged the said order of dismissal by way of Appeal before the I.G. i.e. Respondent No.3 on 16.5.2006, but the same was dismissed on 3.9.2006 (Annexure : L collectively). The said order was received by the petitioner on 5.10.2005. Thereafter the petitioner challenged the impugned orders (Annexure : K & L) respectively passed by the respondent No.4 – DIG and respondent No.3 – I.G. by way of this petition in 2006 on several grounds. However, we are not required to go into those grounds as Shri Patel for the petitioner submitted that he would be satisfied with the order of penalty passed by the Disciplinary Authority as, according to him, there was some negligence on the part of the petitioner, therefore, he should not be fully exonerated. However, he submitted that for such misconduct punishment of dismissal from service was grossly disproportionate and not commensurate with the misconduct which is found to be proved by the Disciplinary Authority. However, Ms. Bhatt for the respondents vehemently submitted that if the petitioner was not negligent in discharge of his duty then such an incident of theft would never have taken place. She, therefore, submitted that when the Appellate Authority took up the matter in its suo-motu jurisdiction under Rule : 54 of the Rules then this Court should not interfere with such findings as held by the Hon'ble Supreme Court in its umpteen number of decisions. In support of her submission she

has placed reliance on the averments made in Affidavit. She submitted that the petitioner was never deployed to check each and every containers, but to keep watch on the activity of the anti-social elements in stealing the valuable property within the Port Area which the petitioner failed. Therefore, the Appellate Authority has rightly enhanced the penalty and dismissed the petitioner from service.

Before considering the rival submissions made by the parties few relevant and important facts are required to be stated which are as under :

As per complaint made by the company theft alleged to have been taken place between 17.11.2004 to 4.12.2004 whereas admittedly the petitioner was on leave from 26.11.2004 to 16.12.2004. The duty of the petitioner was for 12 hours. His duty was to have the surveillance on the criminals. Admittedly it was a huge area of periphery of more than 6 kilo meters where more than 10 thousands containers were lying. Looking to the performance of the petitioner some time back i.e. on 19.9.2004 he was deployed in criminal and intelligence Wing (CIW) of CISF Unit. His past record of about 15 years was dot-less. Considering all these and considering the misconduct which is found to be proved against him the Disciplinary Authority i.e. Respondent No.5 Commandant took lenient view of the matter and imposed penalty of reduction of pay by one stage i.e. Rs.3880 to Rs.3795 for a period of one year with

future effect which, in our considered opinion, ought not to have taken suo-motu in Appeal by the Appellate Authority i.e. D.I.G. Having taken the same in its suo-motu jurisdiction when the petitioner challenged the findings of guilt recorded by the Disciplinary Authority by throwing burden of negligence on the administration then it seems to have annoyed the Appellate Authority whereby he awarded maximum penalty of dismissal from service by observing that the delinquent acted in a manner which was contrary to the force of discipline and thereby rendered himself himself unsuitable to be retained unsuitable in a discipline force like CISF. Unfortunately, in an Appeal filed by the petitioner the respondent No.3 – I.G. did not interfere with the penalty and simply dismissed the Appeal by observing that the punishment of dismissal had been awarded for good and sufficient reasons and it was fully commensurate with the gravity of misconduct for which delinquent was found guilty. The Appellate Authority i.e. I.G. has also observed in his order that on the basis of FIR the police had arrested eight criminals and on interrogation the criminals confessed that they had stolen the copper scraps from the container in connivance with the CISF personnel at the North Gate for which they had paid money. Admittedly, the petitioner was not deployed on the north gate nor there was a charge against him of connivance with the criminals. Thus, there were no good or sufficient reasons for concurring with the findings of DIG awarding maximum punishment of dismissal from

service.

We are conscious of the fact that ordinarily when the Disciplinary Authority passed an order of penalty then the matter should be left to the discretionary power of the Authority. But, having regard to the peculiar facts and circumstances of the case as narrated above, we are of the considered opinion that to ask the DIG or IG to reconsider the case would be an exercise in futility. Therefore, by quashing and setting aside the impugned orders of dismissal passed by the DIG at Annexure : K and the order passed by the IG dismissing his Appeal (ANNEXURE : L collectively) we hereby restore the first order passed by the Disciplinary Authority at Annexure : I whereby the respondent No.5 – Commandant imposed penalty of reduction of pay by one stage i.e. Rs.3880 to Rs.3795 for a period of one year with future effect.

Accordingly, the petition is allowed. The respondents are directed to take back the petitioner in service forthwith and treat the petitioner in service as if no order of dismissal from service was passed against him. However, Shri Girish Patel for the petitioner stated that he was satisfied with the reinstatement order in service with the original order of minor penalty of reduction in salary of one stage i.e. From Rs.3880 to Rs.3795 for a period of one year with future effect and, therefore, he would not claim any back-wages for the period during which

he was not in service. This gesture on the part of the learned Counsel Shri Patel is to be appreciated.

In view of the above discussion, this petition succeeds partly and the impugned order of dismissal passed by the Authority at Annexure : K dated 19.4.2006 passed by the respondent No.4 and & L dated 16.5.2006 passed by the respondent No.3 are hereby quashed and set aside by restoring the impugned order of penalty dated 3.12.2005 passed by the respondent No.5 (Annexure : I). Rule made absolute with no order as to costs.

(B.J.SHETHNA,J.)

(H.B.ANTANI, J.)

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